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HIGH C.OURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.6146/2000

CORAM: Hon'ble Shri **S.R.Nayak,** Chief Justice &
Hon'ble Shri **D.R.Deshmukh,** J.

PETITIONERS : 1. The State of M.P., through The Secretary, School Education Department, Vallabh Bhawan, Bhopal.
2. *The Joint Director, O/o the Divisional* Treasuries, Accounts & Pension, District: Bilsapur (M.P).
3. Block Education Officer, Tribal Welfare Department, Tahsil Katghora, District: Korba, *(Ex-Distt. Bilaspur).*
4. The State of M.P. through the Secretary, Tribal Welfare Deptt. Bhopal.
5. *The Asstt. Commissioner, Tribal* Welfare/Tribal Development, District Korba.

V/s

RESPONDENTS : 1. Chhatram Naik, son of late Shri Janakram *aged about 61 years, Retd. Lower Division* Teacher/Asstt. Teacher, Post-Chhu Via Jaminipali, Tahsil Katghora, District: Korba *(M.P.).*
: 2. M.P. Administrative Tribunal Raipur Bench, RAIPUR, (M.P.).

Shri Vinay Harit, learned Dy. Advocate General for the petitioner/State.
Shri Ravindra Agrawal, counsel for respondent No.1.

ORAL ORDER
(Passed on 27.07.2006)

The following oral order of the Court was passed by **S.R.NAYAK, C.J.**

The Stat of M.P. (now the State of Chhattisgarh) and its authorities being aggrieved by the order of the M.P. Administrative Tribunal, Raipur Bench (for short 'the Tribunal') dated 17/5/2000 passed in O.A. No. 86/1999 have preferred this writ petition under Article 226 of Constitution of India.

2. The facts of the case, in brief, are as follows:

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The first respondent was appointed as a Lower Division Teacher (untrained Middle Pass) in the Tribal Welfare Department on 20/8/1960 and he retired on 31/8/1997 on attaining age of superannuation. After his retirement, the petitioners sought to recover sum of Rs. 59,943/- being the excess sum of money paid to the first respondent on account of alleged wrong fixation of pay-scale, consequent upon the recommendation of Justice Choudhary Commission.

3. The first respondent being aggrieved by the said action instituted O.A. No. 86/1999 before the Tribunal. The petitioners herein contested Original Application by filing return. The Tribunal having opined that the pay fixation was made not due to any misrepresentation of the first respondent or any wrong or fraud committed by him and therefore, the alleged excess payment made to him could not be recovered in the light of the judgment of the Supreme Court in **Sahib Ram Vs. State of Haryana & others**[1] **and Nand Kishore Sharma and others Vs. State of Bihar and others**[2] *and that even the pay fixation of the first respondent in the* pay scale of Rs. 545-925/- in terms of the recommendation of Justice Choudhary's Commission was also in order, because, on the relevant date, he had put in 20 years of qualifying service, allowed the Original Application and quashed the impugned action for recovery of sum of Rs.59,943/-. Hence, this writ petition.

4. We have heard learned counsel for the parties. Learned Deputy Advocate General appearing for the petitioners, would contend that

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1. 1995 SCC (L & S) 248 2. 1986 SCC (L & S) 124

though the first respondent had put in 20 years of qualifying service on the date the recommendations of Justice Choudhary's Pay Commission were brought into force, the first respondent did not fulfill certain other necessary conditions and therefore, he was not entitled to pay-scale of Rs. 545-925/- and in that view of the matter, no exception could be taken to the action of the petitioners in recovering excess sum of Rs. 59,943/- from the gratuity and other pensionery claims payable to the first respondent. That was the only condition urged before us by the learned Dy. Advocate General. Learned Counsel for the first respondent, *per contra*, while adopting the same reasons stated by the Tribunal in support of its order would contend that under no circumstances, at this distance of time, the impugned action of the State and State Authorities could be sustained in law.

5. We have perused the impugned order of the Tribunal. Although the learned Dy. Advocate General contended that though on the date the recommendations of the Justice Choudhary's Pay Commission were brought into force, the respondent No.1 had put in qualifying service of 20 years, he did not fulfill certain other conditions in order to enable him to claim pay-scale of Rs.545-925/-, when we pointedly asked the learned Dy. Advocate General as to whether such contention was raised before the Tribunal, he was not in a position to refer to the return where such ground is taken. In fact such ground is not taken. Secondly, a careful perusal of the impugned older of the Tribunal would also disclose that such ground was not urged before it for decision-making. In that view of the matter, there is absolutely no merit in the writ petition. In the first instance, the fact disclosed in the case would show that when the recommendations of Justice Choudhary's Pay Commission were brought into force, the

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respondent No. 1 had put in qualifying service of 20 years and on that ground itself, he was entitled to pay-scale of Rs.545-925/-. The second equally weighty reason not to allow the petitioners to recover alleged excess sum paid to the first respondent is the fact that it is nobody's case that the pay-scale of Rs.545-925/- was extended to the first respondent due to any misrepresentation made by him or fraud committed by him. If that is the factual position over which there is no dispute, in view of the law laid down by the Apex Court in the aforementioned two decisions and several others to follow, the State Authorities would not be justified in recovering the so-called excess sum of money even assuming that the pay of the first respondent was wrongly fixed in the pay-scale of Rs.545-925/- after the recommendations of Justice Choudhary Pay Commission.

6. Looking from any angle, there is no merit in the writ petition. The writ petition is accordingly dismissed. No costs.

Sd/- Chief Justice	Sd/- Dilip Raosaheb Deshmukh Judge